

2011-2012 Regular Sessions

I N S E N A T E

(PREFILED)

January 5, 2011

Introduced by Sen. PERALTA -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

AN ACT to amend the labor law, in relation to allowing farm workers one day of rest each week, and including farm laborers within the provisions pertaining to overtime compensation and unemployment insurance, and regulating the farm employment of certain employees whose earning capacity is affected or impaired by youth or age, and granting collective bargaining rights to certain farm laborers and establishing an advisory committee on collective bargaining; to amend the public health law, in relation to the application of the sanitary code to all farm and food processing labor camps for migrant workers; and to amend the workers' compensation law, in relation to the eligibility of farm laborers for disability benefits and the provision of claim forms to farm laborers injured in the course of employment and in relation to service as farm laborers

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. This act shall be known and may be cited as the "Farmwork-
2 ers Fair Labor Practices Act".
3 S 2. Section 2 of the labor law is amended by adding a new subdivision
4 17 to read as follows:
5 17. "FARM LABOR" SHALL INCLUDE ALL SERVICES PERFORMED IN AGRICULTURAL
6 EMPLOYMENT IN CONNECTION WITH CULTIVATING THE SOIL, OR IN CONNECTION
7 WITH RAISING OR HARVESTING OF AGRICULTURAL COMMODITIES, INCLUDING
8 SERVICES PERFORMED ON ORCHARDS, PLANTATIONS, NURSERIES AND GREENHOUSES,
9 AND SHALL INCLUDE THE RAISING, HATCHING, SHEARING, CARING FOR AND
10 MANAGEMENT OF LIVESTOCK, POULTRY, DAIRY, BEES AND FUR-BEARING ANIMALS,
11 AND SHALL INCLUDE THE HARVESTING OR PRODUCTION OF MAPLE SYRUP OR MAPLE
12 SUGAR, AND SHALL INCLUDE THE OPERATION AND MAINTENANCE OF FARM EQUIPMENT
13 AND IMPROVEMENT OR MAINTENANCE OF FARM WATER USE AREAS, AND SHALL

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [] is old law to be omitted.

LBD03070-01-1

1 INCLUDE THE PLANTING, DRYING, PACKAGING OR OTHER PROCESSING OF ANY AGRI-
2 CULTURAL OR HORTICULTURAL COMMODITY RAISED ON THE EMPLOYER'S FARM. THE
3 TERM "FARM LABOR" SHALL NOT INCLUDE SERVICES PERFORMED IN CONNECTION
4 WITH COMMERCIAL CANNING, FREEZING, GRADING OR OTHER PROCESSING OF ANY
5 AGRICULTURAL OR HORTICULTURAL COMMODITY NOT RAISED ON THE EMPLOYER'S
6 FARM. THIS PARAGRAPH SHALL NOT APPLY TO THE PARENT, CHILD, SPOUSE OR
7 OTHER MEMBER OF THE EMPLOYER'S FAMILY RELATED BY THE THIRD DEGREE OF
8 CONSANGUINITY OR AFFINITY.

9 S 3. Subdivision 1 of section 161 of the labor law is amended by
10 adding a new undesignated paragraph to read as follows:

11 EVERY PERSON EMPLOYED AS A FARM LABORER SHALL BE ALLOWED AT LEAST
12 TWENTY-FOUR CONSECUTIVE HOURS OF REST IN EACH AND EVERY CALENDAR WEEK. A
13 FARM LABORER MAY CONSENT IN WRITING TO WAIVE THIS RIGHT AND WORK ON THE
14 DAY OF REST, PROVIDED THAT HE OR SHE SHALL BE PAID AS PROVIDED UNDER
15 SECTION ONE HUNDRED SIXTY-THREE-A OF THIS TITLE. THIS PARAGRAPH SHALL
16 NOT APPLY TO THE PARENT, CHILD, SPOUSE OR OTHER MEMBER OF THE EMPLOYER'S
17 FAMILY RELATED BY THE THIRD DEGREE OF CONSANGUINITY OR AFFINITY. TWEN-
18 TY-FOUR CONSECUTIVE HOURS SPENT AT REST BECAUSE OF CIRCUMSTANCES, SUCH
19 AS WEATHER OR CROP CONDITIONS, SHALL BE DEEMED TO CONSTITUTE THE REST
20 REQUIRED BY THIS PARAGRAPH. THE DAY OF REST SHOULD BE THE SAME AS THE
21 TRADITIONAL DAY RESERVED BY THE FARM LABORER FOR RELIGIOUS WORSHIP,
22 WHENEVER POSSIBLE.

23 S 4. Paragraphs b and d of subdivision 2 of section 161 of the labor
24 law, as amended by chapter 281 of the laws of 1941, are amended to read
25 as follows:

26 b. Employees in [dairies, creameries,] milk condenseries, milk powder
27 factories, milk sugar factories, milk shipping stations, butter and
28 cheese factories, ice cream manufacturing plants and milk bottling
29 plants, where not more than seven persons are employed;

30 d. Employees whose duties include not more than three hours' work on
31 Sunday in setting sponges in bakeries, [caring for live animals,] main-
32 taining fires, or making necessary repairs to boilers or machinery.

33 S 5. The labor law is amended by adding a new section 163-a to read as
34 follows:

35 S 163-A. HOURS OF AGRICULTURAL EMPLOYMENT. NO PERSON OR CORPORATION
36 OPERATING A FARM SHALL REQUIRE ANY FARM LABORER TO WORK MORE THAN TEN
37 HOURS IN ANY DAY, SIXTY HOURS IN ANY CALENDAR WEEK, OR SIX DAYS IN ANY
38 CALENDAR WEEK, UNLESS SUCH FARM LABORER IS PAID AS FOLLOWS:

39 A. HOURLY RATE. (1) ANY FARM LABORER WHO IS PAID ON AN HOURLY BASIS
40 AND WHO IS EIGHTEEN YEARS OF AGE OR OVER, OR WHO IS SIXTEEN OR SEVENTEEN
41 YEARS OF AGE AND NOT REQUIRED BY LAW TO ATTEND SCHOOL SHALL NOT BE
42 EMPLOYED MORE THAN TEN HOURS IN ANY DAY, OR MORE THAN SIXTY HOURS IN ANY
43 CALENDAR WEEK, OR MORE THAN SIX DAYS IN ANY CALENDAR WEEK UNLESS THE
44 FARM LABORER RECEIVES ONE AND ONE-HALF TIMES THE REGULAR RATE AT WHICH
45 HE IS EMPLOYED FOR ALL HOURS WORKED IN EXCESS OF TEN HOURS IN ANY DAY OR
46 SIXTY HOURS IN ANY CALENDAR WEEK. ANY FARM LABORER WHO WORKS ON THE
47 SEVENTH DAY IN ANY CALENDAR WEEK SHALL RECEIVE ONE AND ONE-HALF TIMES
48 THE REGULAR RATE AT WHICH HE IS EMPLOYED FOR THE FIRST EIGHT HOURS
49 WORKED, AND TWO TIMES THE REGULAR RATE AT WHICH HE IS EMPLOYED FOR ALL
50 HOURS WORKED IN EXCESS OF EIGHT HOURS THAT DAY.

51 (2) BEGINNING ON JANUARY FIRST, TWO THOUSAND FIFTEEN, ANY FARM LABORER
52 WHO IS PAID AN HOURLY WAGE RATE SHALL NOT BE EMPLOYED MORE THAN TEN
53 HOURS IN ANY DAY OR MORE THAN FIFTY-FIVE HOURS IN ANY CALENDAR WEEK
54 UNLESS THE FARM LABORER RECEIVES ONE AND ONE-HALF TIMES THE REGULAR RATE
55 AT WHICH HE IS EMPLOYED FOR ALL HOURS WORKED IN EXCESS OF TEN HOURS IN
56 ANY DAY OR FIFTY-FIVE HOURS IN ANY CALENDAR WEEK. ANY FARM LABORER WHO

1 WORKS ON THE SEVENTH DAY IN ANY CALENDAR WEEK SHALL RECEIVE ONE AND
2 ONE-HALF TIMES THE REGULAR RATE AT WHICH HE IS EMPLOYED FOR THE FIRST
3 EIGHT HOURS WORKED, AND TWO TIMES THE REGULAR RATE AT WHICH HE IS
4 EMPLOYED FOR ALL HOURS WORKED IN EXCESS OF EIGHT HOURS THAT DAY.

5 B. PIECE WORK RATE. (1) ANY FARM LABORER WHO IS PAID ON A PIECE RATE
6 BASIS SHALL BE PAID AT A RATE WHICH SHALL BE NO LESS THAN ONE HUNDRED
7 FIFTY PERCENT OF THE MINIMUM WAGE RATE ESTABLISHED BY REGULATIONS OF THE
8 DEPARTMENT FOR HOURS WORKED IN EXCESS OF TEN HOURS IN ANY DAY OR SIXTY
9 HOURS IN ANY CALENDAR WEEK.

10 (2) BEGINNING ON JANUARY FIRST, TWO THOUSAND FIFTEEN, ANY FARM LABORER
11 WHO IS PAID ON A PIECE WORK BASIS SHALL BE PAID AT A RATE NO LESS THAN
12 ONE HUNDRED FIFTY PERCENT OF THE MINIMUM WAGE RATE ESTABLISHED BY REGU-
13 LATIONS OF THE DEPARTMENT FOR HOURS WORKED IN EXCESS OF TEN HOURS IN ANY
14 DAY OR FIFTY-FIVE HOURS IN ANY CALENDAR WEEK.

15 (3) ANY FARM LABORER WHO IS PAID A PIECE WORK RATE WHO WORKS ON THE
16 SEVENTH DAY IN ANY CALENDAR WEEK SHALL BE PAID AT A RATE NO LESS THAN
17 ONE HUNDRED FIFTY PERCENT OF THE MINIMUM WAGE RATE ESTABLISHED BY REGU-
18 LATIONS OF THE DEPARTMENT FOR THE FIRST EIGHT HOURS AND TWO HUNDRED
19 PERCENT OF THAT MINIMUM WAGE RATE FOR ANY HOURS WORKED IN EXCESS OF
20 EIGHT ON THAT DAY. NOTHING IN THIS SECTION SHALL PROHIBIT A FARM EMPLOY-
21 ER FROM PAYING A PIECE WORK RATE IN EXCESS OF THE RATES REQUIRED BY THIS
22 SECTION.

23 S 6. Section 564 of the labor law, as added by chapter 675 of the laws
24 of 1977, is amended to read as follows:

25 S 564. Agricultural labor. 1. Coverage. (a) Notwithstanding the
26 provisions of section five hundred sixty of this article, an employer of
27 persons engaged in agricultural labor shall become liable for contribu-
28 tions under this article if the employer:

29 (1) has paid cash remuneration of [twenty thousand] SIXTY-TWO HUNDRED
30 FIFTY dollars or more in any calendar quarter to persons employed in
31 agricultural labor, and such liability shall commence on the first day
32 of such quarter, or

33 (2) has employed in agricultural labor ten or more persons on each of
34 twenty days during a calendar year or the preceding calendar year, each
35 day being in a different calendar week, and the liability shall in such
36 event commence on the first day of the calendar year, or

37 (3) is liable for the tax imposed under the federal unemployment tax
38 act as an employer of agricultural labor and the liability shall in such
39 event commence on the first day of the calendar quarter in such calendar
40 year when he first paid remuneration for agricultural labor in this
41 state.

42 (b) An employer who becomes liable for contributions under paragraph
43 (a) of this subdivision shall cease to be liable as of the first day of
44 a calendar quarter next following the filing of a written application
45 provided the commissioner finds that the employer:

46 (1) has not paid to persons employed in agricultural labor cash remun-
47 eration of [twenty thousand] SIXTY-TWO HUNDRED FIFTY dollars or more in
48 any of the eight calendar quarters preceding such day, and

49 (2) has not employed in agricultural labor ten or more persons on each
50 of twenty days during the current or the preceding calendar year, each
51 day being in a different week, and

52 (3) is not liable for the tax imposed under the federal unemployment
53 tax act as an employer of agricultural labor.

54 2. EXCLUSION FROM COVERAGE. THE TERM "EMPLOYMENT" DOES NOT INCLUDE
55 SERVICES RENDERED BY AN INDIVIDUAL WHO IS AN ALIEN ADMITTED TO THE
56 UNITED STATES TO PERFORM AGRICULTURAL LABOR PURSUANT TO SECTIONS 214(C)

1 AND 101(A)(15)(H) OF THE FEDERAL IMMIGRATION AND NATIONALITY ACT IF, AT
2 THE TIME SUCH SERVICES ARE RENDERED, THEY ARE EXCLUDED FROM THE DEFINI-
3 TION OF EMPLOYMENT IN SECTION 3306(C) OF THE FEDERAL UNEMPLOYMENT TAX
4 ACT.

5 3. Crew leader. Whenever a person renders services as a member of a
6 crew which is paid and furnished by the crew leader to perform services
7 in agricultural labor for another employer, such other employer shall,
8 for the purpose of this article, be deemed to be the employer of such
9 person, unless:

10 (a) the crew leader holds a valid certificate of registration under
11 the federal farm labor contractor registration act of nineteen hundred
12 sixty-three or substantially all the members of the crew operate or
13 maintain tractors, mechanized harvesting or cropdusting machinery or any
14 other mechanized equipment which is provided by the crew leader, and

15 (b) the crew leader is not an employee of such other employer and has
16 not entered into a written agreement with such employer under which he
17 is designated as an employee.

18 S 7. Subdivision 1 of section 674 of the labor law, as added by chap-
19 ter 552 of the laws of 1969, is amended to read as follows:

20 1. The commissioner may promulgate such regulations as he deems appro-
21 priate to carry out the purposes of this article and to safeguard mini-
22 mum wage standards. Such regulations may include, but are not limited
23 to, the defining of the circumstances or conditions for the acceptance
24 of non-hourly rates and piece rates as equivalent to the minimum hourly
25 rates established by this article. Such regulations also may include,
26 but are not limited to, waiting time and call-in pay rates; wage
27 provisions governing guaranteed earnings during specified periods of
28 work; allowances for meals, lodging, and other items, services and
29 facilities when furnished by the employer; [and the employment of indi-
30 viduals whose earning capacity is affected or impaired by youth or age,]
31 or by physical or mental deficiency or injury, under special certif-
32 icates issued by the commissioner, at such wages lower than the minimum
33 wage established by this article and for such period as shall be
34 prescribed in such regulations.

35 S 8. Paragraph (a) of subdivision 3 of section 701 of the labor law,
36 as amended by chapter 43 of the laws of 1989, is amended to read as
37 follows:

38 (a) The term "employees" includes but is not restricted to any indi-
39 vidual employed by a labor organization; any individual whose employment
40 has ceased as a consequence of, or in connection with, any current labor
41 dispute or because of any unfair labor practice, and who has not
42 obtained any other regular and substantially equivalent employment; and
43 shall not be limited to the employees of a particular employer, unless
44 the article explicitly states otherwise, but shall not include any indi-
45 vidual employed by his parent or spouse or in the domestic service of
46 and directly employed, controlled and paid by any person in his home,
47 any individual whose primary responsibility is the care of a minor child
48 or children and/or someone who lives in the home of a person for the
49 purpose of serving as a companion to a sick, convalescing or elderly
50 person or any individuals employed only for the duration of a labor
51 dispute, or any individuals employed as farm laborers BY A FARM EMPLOYER
52 WITH SALES OF UNDER SIX HUNDRED FIFTY THOUSAND DOLLARS DURING THE PREVI-
53 OUS CALENDAR YEAR ACCORDING TO THE UNITED STATES DEPARTMENT OF AGRICUL-
54 TURE NATIONAL AGRICULTURAL STATISTICS SERVICE, or, any individual who
55 participates in and receives rehabilitative or therapeutic services in a
56 charitable non-profit rehabilitation facility or sheltered workshop or

1 any individual employed in a charitable non-profit rehabilitation facil-
2 ity or sheltered workshop who has received rehabilitative or therapeutic
3 services and whose capacity to perform the work for which he is engaged
4 is substantially impaired by physical or mental deficiency or injury.

5 S 9. The labor law is amended by adding a new section 704-b to read as
6 follows:

7 S 704-B. UNFAIR LABOR PRACTICES; AGRICULTURE. 1. IT IS THE POLICY OF
8 THE STATE TO PROTECT THE RIGHTS OF FARM LABORERS WITHOUT CAUSING IMMEDI-
9 ATE AND IRREPARABLE HARM TO EMPLOYERS. IN RECOGNITION OF THE NEED TO
10 AVOID INTERRUPTION OF THE AGRICULTURAL PRODUCTION OF CROPS WITH A SHORT
11 PEAK HARVEST SEASON, THIS POLICY IS BEST ACHIEVED BY PROVIDING FARM
12 EMPLOYERS AND THEIR EMPLOYEES WITH A SHORT TEMPORARY PERIOD TO SETTLE
13 THEIR LABOR DISPUTE WITHOUT CAUSING IMMEDIATE OR IRREPARABLE HARM TO THE
14 EMPLOYER.

15 2. DEFINITIONS. WHEN USED IN THIS SECTION THE TERMS:

16 (A) "SHORT PEAK HARVEST SEASON" MEANS THE PERIOD FOR FRUITS AND VEGE-
17 TABLES THAT HAVE A MAXIMUM HARVEST PERIOD OF NO MORE THAN SIX WEEKS
18 DURING WHICH SUCH AGRICULTURAL PRODUCT IS HARVESTED FOR SALE, AS DETER-
19 MINED BY THE DEPARTMENT OF AGRICULTURE AND MARKETS.

20 (B) "WORK STOPPAGE" MEANS ANY STRIKE, OR CONCERTED CESSATION OR SLOW-
21 DOWN OF WORK BY EMPLOYEES.

22 (C) "LOCKOUT" MEANS A WORK STOPPAGE DURING WHICH AN EMPLOYER PREVENTS
23 EMPLOYEES FROM WORKING.

24 3. IN THE EVENT THAT THE BOARD AND ITS EMPLOYEES RECEIVE NOTICE THAT A
25 LABOR DISPUTE HAS ARISEN BETWEEN A FARM EMPLOYER THAT WILL OR MAY RESULT
26 IN A WORK STOPPAGE OR LOCKOUT, THE BOARD SHALL IMMEDIATELY INITIATE
27 SETTLEMENT PROCEEDINGS UNDER SECTION SEVEN HUNDRED TWO-A OF THIS ARTI-
28 CLE.

29 (A) AFTER THE INITIATION OF SETTLEMENT PROCEEDINGS, ANY WORK STOPPAGE
30 OR LOCKOUT SHALL CEASE FOR A PERIOD OF NOT MORE THAN TWENTY-ONE DAYS IF
31 BOTH OF THE FOLLOWING CIRCUMSTANCES EXIST:

32 (I) THE WORK STOPPAGE OR LOCKOUT OCCURS DURING A SHORT PEAK HARVEST
33 SEASON; AND

34 (II) THE WORK STOPPAGE OR LOCKOUT WILL CAUSE IMMEDIATE AND IRREPARABLE
35 INJURY, LOSS OR DAMAGE TO THE EMPLOYER.

36 (B) DURING SUCH TWENTY-ONE DAY PERIOD, BOTH PARTIES SHALL ENTER INTO
37 GOOD FAITH NEGOTIATIONS TO SETTLE THE LABOR DISPUTE, WHICH PERIOD SHALL
38 BE REFERRED TO AS A COOLING OFF PERIOD.

39 (C) THE BOARD SHALL CONDUCT AN IMMEDIATE AND EXPEDITED FACT-FINDING
40 HEARING TO DETERMINE WHETHER THE CIRCUMSTANCES UNDER PARAGRAPH (A) OF
41 THIS SUBDIVISION EXIST. EACH PARTY SHALL HAVE THE OPPORTUNITY TO SUBMIT
42 WRITTEN AND ORAL TESTIMONY AT THE HEARING. THE BOARD SHALL NOT BE BOUND
43 BY TECHNICAL RULES OF EVIDENCE PREVAILING IN COURTS OF LAW OR EQUITY.

44 (D) THE BOARD SHALL ISSUE ITS DETERMINATION IN WRITING WITHIN
45 FORTY-EIGHT HOURS OF THE CONCLUSION OF THE HEARING, WHICH SHALL INCLUDE
46 FINDINGS OF FACT AND A RATIONALE FOR ITS DETERMINATION. A COPY OF THE
47 BOARD'S DETERMINATION SHALL BE PROVIDED TO EACH PARTY WITHIN TWENTY-FOUR
48 HOURS.

49 (E) FOR PURPOSES OF THIS SECTION, AN EMPLOYEE WHO IS ABSENT FROM WORK
50 WITHOUT PERMISSION, OR WHO ABSTAINS WHOLLY OR IN PART FROM THE FULL
51 PERFORMANCE OF HIS OR HER EMPLOYMENT DUTIES WITHOUT PERMISSION ON THE
52 DATE WHEN A WORK STOPPAGE OR LOCKOUT OCCURS SHALL BE PRESUMED TO HAVE
53 ENGAGED IN SUCH WORK STOPPAGE OR LOCKOUT.

54 4. IF EITHER PARTY IS FOUND TO BE IN VIOLATION OF THE BOARD'S DETERMI-
55 NATION, THE BOARD MAY FILE A PETITION WITH THE SUPREME COURT IN ALBANY
56 COUNTY UPON NOTICE TO ALL PARTIES FOR TEMPORARY INJUNCTIVE RELIEF. THE

1 BOARD SHALL NOT BE REQUIRED TO PROVIDE ANY UNDERTAKINGS OR BOND AND
2 SHALL NOT BE LIABLE FOR ANY DAMAGES OR COSTS WHICH MAY HAVE BEEN
3 SUSTAINED BY REASON OF ANY TEMPORARY INJUNCTIVE RELIEF ORDERED. IF THE
4 BOARD FAILS TO ACT WITHIN TEN DAYS, THE BOARD SHALL BE DEEMED TO HAVE
5 MADE A FINAL DETERMINATION NOT TO SEEK TEMPORARY INJUNCTIVE RELIEF.

6 S 10. The labor law is amended by adding a new section 719 to read as
7 follows:

8 S 719. ADVISORY COMMITTEE ON AGRICULTURAL COLLECTIVE BARGAINING. 1.
9 THERE IS HEREBY ESTABLISHED AN ADVISORY COMMITTEE ON COLLECTIVE BARGAIN-
10 ING BETWEEN FARM EMPLOYERS AND FARM LABORERS WHOSE MEMBERS SHALL BE
11 APPOINTED BY THE GOVERNOR ON OR BEFORE APRIL FIRST, TWO THOUSAND TWELVE.
12 THE ADVISORY COMMITTEE SHALL CONSIST OF SEVEN MEMBERS, INCLUDING THE
13 COMMISSIONER OR HIS OR HER DESIGNEE, THE COMMISSIONER OF THE DEPARTMENT
14 OF AGRICULTURE AND MARKETS OR HIS OR HER DESIGNEE, ONE UPON THE NOMI-
15 NATION OF THE SPEAKER OF THE ASSEMBLY, ONE UPON NOMINATION OF THE TEMPO-
16 RARY PRESIDENT OF THE SENATE, ONE UPON NOMINATION BY THE PRESIDENT OF
17 THE NEW YORK STATE AMERICAN FEDERATION OF LABOR-CONGRESS OF INDUSTRIAL
18 ORGANIZATIONS, ONE UPON THE NOMINATION OF THE NEW YORK STATE FARM
19 BUREAU, AND ONE MEMBER WITH EXPERIENCE AND EXPERTISE IN COLLECTIVE
20 BARGAINING AND LABOR RELATIONS WHO SHALL BE APPOINTED TO CHAIR THE ADVI-
21 SORY COMMITTEE.

22 2. THE ADVISORY COMMITTEE SHALL MAKE RECOMMENDATIONS FOR LEGISLATION
23 TO IMPLEMENT COLLECTIVE BARGAINING STRUCTURES AND PROCEDURES WHERE
24 APPROPRIATE, AND TO FOSTER LABOR-MANAGEMENT COOPERATION AND DISPUTE
25 RESOLUTION BETWEEN FARM EMPLOYERS AND FARM LABORERS. IN MAKING ITS
26 RECOMMENDATIONS, THE ADVISORY COMMITTEE SHALL CONSIDER THE PROVISIONS OF
27 THE STATE LABOR RELATIONS ACT, THE LAWS OF OTHER STATES RELATING TO
28 COLLECTIVE BARGAINING AND LABOR RELATIONS IN FARM EMPLOYMENT, AND THE
29 UNIQUE CHARACTERISTICS OF THE AGRICULTURE INDUSTRY INCLUDING BUT NOT
30 LIMITED TO LENGTH OF HARVEST AND GROWING SEASONS, SEASONAL FLUCTUATIONS
31 IN EMPLOYMENT, ANNUAL SALES, AND IMPORT AND EXPORT CONDITIONS AFFECTING
32 NEW YORK AGRICULTURE. THE ADVISORY COMMITTEE SHALL REPORT TO THE GOVER-
33 NOR, THE SPEAKER OF THE ASSEMBLY AND THE TEMPORARY PRESIDENT OF THE
34 SENATE ON OR BEFORE DECEMBER THIRTY-FIRST, TWO THOUSAND TWELVE.

35 3. THE MEMBERS OF THE ADVISORY COMMITTEE SHALL RECEIVE NO COMPENSATION
36 FOR THEIR SERVICES, BUT SHALL BE ALLOWED THEIR ACTUAL AND NECESSARY
37 EXPENSES INCURRED IN THE PERFORMANCE OF THEIR DUTIES.

38 S 11. Paragraph (m) of subdivision 5 of section 225 of the public
39 health law, as amended by section 51 of part A of chapter 58 of the laws
40 of 2010, is amended to read as follows:

41 (m) require that application be made for a permit to operate a farm or
42 food processing labor camp as defined in the sanitary code; authorize
43 appropriate officers or agencies to issue such a permit when the appli-
44 cant is in compliance with the established regulations; prescribe stand-
45 ards for living quarters at farm and food processing labor camps,
46 including provisions for sanitary conditions; light, air, and safety;
47 protection from fire hazards; maintenance; and such other matters as may
48 be appropriate for security of life or health, provided however, that
49 the provisions of the sanitary code established pursuant to the
50 provisions hereof shall apply to all farm and food processing labor
51 camps intended to house migrant workers and which are occupied [by five
52 or more persons]. In the preparation of such regulations, the public
53 health and health planning council may request and shall receive techni-
54 cal assistance from the board of standards and appeals of the state
55 department of labor and the state building code commission. Such regu-

1 lation shall be enforced in the same manner as are other provisions of
2 the sanitary code;

3 S 12. Section 51 of the workers' compensation law, as amended by chap-
4 ter 561 of the laws of 2003, is amended to read as follows:

5 S 51. Posting of notice regarding compensation. Every employer who has
6 complied with section fifty of this article shall post and maintain in a
7 conspicuous place or places in and about his place or places of business
8 typewritten or printed IN ENGLISH AND SPANISH notices in form prescribed
9 by the chairman, stating the fact that he has complied with all the
10 rules and regulations of the chairman and the board and that he has
11 secured the payment of compensation to his employees and their depen-
12 dents in accordance with the provisions of this chapter, but failure to
13 post such notice as herein provided shall not in any way affect the
14 exclusiveness of the remedy provided for by section eleven of this chap-
15 ter. Every employer who owns or operates automotive or horse-drawn vehi-
16 cles and has no minimum staff of regular employees required to report
17 for work at an established place of business maintained by such employer
18 and every employer who is engaged in the business of moving household
19 goods or furniture shall post such notices in each and every vehicle
20 owned or operated by him. Failure to post or maintain such notice in any
21 of said vehicles shall constitute presumptive evidence that such employ-
22 er has failed to secure the payment of compensation. The chairman may
23 require any employer to furnish a written statement at any time showing
24 the stock corporation, mutual corporation or reciprocal insurer in which
25 such employer is insured or the manner in which such employer has
26 complied with any provision of this chapter. Failure for a period of ten
27 days to furnish such written statement shall constitute presumptive
28 evidence that such employer has neglected or failed in respect of any of
29 the matters so required. Any employer who fails to comply with the
30 provisions of this section shall be required to pay to the board a fine
31 of [up to two hundred fifty] FIVE HUNDRED dollars for each violation, in
32 addition to any other penalties imposed by law to be deposited into the
33 uninsured employers' fund.

34 S 13. The workers' compensation law is amended by adding a new section
35 110-b to read as follows:

36 S 110-B. REPORTING OF INJURIES TO EMPLOYER. EVERY FARM LABOR CONTRAC-
37 TOR, FOREMAN OR SUPERVISOR OF FARM LABORERS WHO HAS NOTICE OF ANY INJURY
38 TO A FARM LABORER INCURRED DURING THE COURSE OF EMPLOYMENT SHALL BE
39 REQUIRED TO INFORM THE EMPLOYER, OWNER OR OPERATOR OF A FARM OF ANY SUCH
40 INJURY.

41 S 14. The first undesignated paragraph of section 120 of the workers'
42 compensation law, as amended by chapter 61 of the laws of 1989, is
43 amended to read as follows:

44 It shall be unlawful for any employer or his or her duly authorized
45 agent to discharge or in any other manner discriminate against an
46 employee as to his or her employment because such employee has claimed
47 or attempted to claim compensation from such employer, REQUESTED A CLAIM
48 FORM FOR INJURIES RECEIVED IN THE COURSE OF EMPLOYMENT, or because he or
49 she has testified or is about to testify in a proceeding under this
50 chapter and no other valid reason is shown to exist for such action by
51 the employer.

52 S 15. The opening paragraph of paragraph A of subdivision 6 of section
53 201 of the workers' compensation law, as amended by chapter 481 of the
54 laws of 2010, is amended to read as follows:

55 "Employment" means employment in any trade, business or occupation
56 carried on by an employer, except that the following shall not be deemed

1 employment under this article: services performed for the state, a
2 municipal corporation, local governmental agency, other political subdi-
3 vision or public authority; employment subject to the federal railroad
4 unemployment insurance act; service performed on or as an officer or
5 member of the crew of a vessel on the navigable water of the United
6 States or outside the United States; [service as farm laborers;] casual
7 employment and the first forty-five days of extra employment of employ-
8 ees not regularly in employment as otherwise defined herein; service as
9 golf caddies; and service during all or any part of the school year or
10 regular vacation periods as a part-time worker of any person actually in
11 regular attendance during the day time as a student in an elementary or
12 secondary school. The term "employment" shall include domestic or
13 personal work in a private home. The term "employment" shall not include
14 the services of a licensed real estate broker or sales associate if it
15 be proven that (a) substantially all of the remuneration (whether or not
16 paid in cash) for the services performed by such broker or sales associ-
17 ate is directly related to sales or other output (including the perform-
18 ance of services) rather than to the number of hours worked; (b) the
19 services performed by the broker or sales associate are performed pursu-
20 ant to a written contract executed between such broker or sales associ-
21 ate and the person for whom the services are performed within the past
22 twelve to fifteen months; and (c) the written contract provided for in
23 subparagraph (b) of this paragraph was not executed under duress and
24 contains the following provisions:

25 S 16. Nothing in this act shall be deemed to diminish the rights,
26 privileges, or remedies of any farm laborer under any collective
27 bargaining agreement entered into on or after the effective date of this
28 act.

29 S 17. This act shall take effect April 1, 2012, provided that section
30 fifteen of this act shall take effect on the one hundred eightieth day
31 after it shall have become a law, provided further, that section five of
32 this act shall take effect January 1, 2013 and sections eight and nine
33 of this act shall take effect April 1, 2013.